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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/588,915

09/02/2008

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2912

7590
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03/01/2011

EXAMINER

PRYOR, ALTON NATHANIEL

ART UNIT

PAPER NUMBER

1616

MAIL DATE

DELIVERY MODE

03/01/2011

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/588,915	Applicant(s) LEBLANC ET AL.	
	Examiner ALTON N. PRYOR	Art Unit 1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 January 2011.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4,8,9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 1-4,8 and 9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>4/16/08;2/27/09;3/18/10</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4,8,9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hofer et al. (US 6875727;4/5/05). Hofer et al. teach a method of using macrolides to control pests (abstract). Hofer et al. teach that numerous actives including cafentrazone-ethyl can be added to the macrolides (column 76 line 51) . Hofer et al. suggest a method of applying a composition comprising macrolides and carfentrazone-ethyl to plant propagation material such as seedlings and seeds (loci). See column 110 line 49 – column 111 line 15. Hofer et al. teach that the propagation material is that of stone fruit such as plums and vines such as grapevines (column 110 line 49 – column 111 line 15, column 121 lines 24-40). Hofer et al. do not exemplify a method of applying macrolides plus carfentrazone-ethyl to stone fruit or vine seeds or seedlings. However, this would have been obvious since the prior suggests treating said propagation of plums and vines with carfentrazone-ethyl. Thus, Hofer et al. make instant method obvious. With respect to the amount of carfentrance-ethyl used, it is obvious to optimize amounts to determine the concentration effective at controlling unwanted vegetation without destroying desirable plant growth.

Claims 1,2,8,9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bieringer et al. (WO 0128341; 4/26/01 in view of English Equivalent USPN 7056863; 6/6/06). Bieringer et al. suggest a composition comprising hydroxyphenylpyruvate plus carfentrazone-ethyl (abstract, column 9 lines 14-27). Bieringer et al. teach a method of applying the composition to harmful plants or parts thereof to control their growth in crops, including the composition's application in viticulture (column 11 lines 41-67). Bieringer et al. do not exemplify a method of applying hydroxyphenylpyruvate plus carfentrazone-ethyl in viticulture application. However, this would have been obvious since the prior suggests using carfentrazone-ethyl in viticulture. Thus, Bieringer et al. make instant method obvious. With respect to the amount of carfentrazone-ethyl used, it is obvious to optimize amounts to determine the concentration effective at controlling unwanted vegetation without destroying desirable plant growth.

Claims 1,2,8,9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hacker et al. (WO 03407340; 6/12/03 in view of English Equivalent USAN 20030158040; 8/21/03). Hacker et al. suggest a composition comprising carfentrazone-ethyl (abstract 27). Hacker et al. teach a method of applying the composition to harmful plants or parts thereof to control their growth in crops, including the composition's application in viticulture (paragraphs 39,73). Hacker et al. do not exemplify a method of applying carfentrazone-ethyl in viticulture application. However, this would have been obvious since the prior suggests using carfentrazone-ethyl in viticulture. Thus, Hacker et al. make instant method obvious. With respect to the amount of carfentrazone-ethyl used,

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it is obvious to optimize amounts to determine the concentration effective at controlling unwanted vegetation without destroying desirable plant growth.

Election Status

The Election requirement is withdrawn, because of Applicants' amended claims in response filed 1/12/11.

Telephonic Inquiry

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ALTON N. PRYOR whose telephone number is (571)272-0621. The examiner can normally be reached on 8:00 a.m. - 4:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter can be reached on 571-272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/Alton N. Pryor/
Primary Examiner, Art Unit 1616